

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-71-T - ORDER NO. 2006-25  
JANUARY 19, 2006

IN RE:	Application of Congaree Delivery Service, a	)	ORDER GRANTING
	Division of Congaree Service & Trading Co.,	)	CLASS E CERTIFICATE
	LLC, 1043 Huger Street, Columbia, South	)	
	Carolina 29201 for a Class E (HHG)	)	
	Certificate of Public Convenience and	)	
	Necessity.	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Congaree Delivery Service, a Division of Congaree Service & Trading Co., LLC, 1043 Huger Street, Columbia, SC 29201 (“Congaree” or “the Company”) for a Class E Certificate of Public Convenience and Necessity to transport household goods as defined by S.C. Code Ann. Regs. 103-210(1) between points and places in South Carolina.

The Commission’s Docketing Department instructed the Company to publish a Notice of Filing in newspapers of general circulation in the service area desired. The Notice of Filing was published and it instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Protests or Petitions to Intervene were received.

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2005) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2005) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2005) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by

the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June, 1998.

6. 26 S.C. Code Ann. Regs. 103-102(l) (Supp. 2005) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Code Ann. Regs. 103-102(14) (Supp. 2005) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Code Ann. Regs. 103-114 (Supp. 2005) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

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<sup>1</sup> 26 S.C. Code Ann. Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Ann. Regs. 103-133 (Supp. 2005) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (l) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The

applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to “fit and able,” the submitting of the application for operating authority would be sufficient demonstration of the applicant’s willingness to provide the authority sought.

10. 26 S.C. Code Ann. Regs. 103-134 (Supp. 2005) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

#### **EVIDENCE OF RECORD**

The hearing on the Application was held on August 10, 2005, at 10:30 a.m. in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. Congaree was represented by Eugene H. Matthews, Esquire. The Office of Regulatory Staff (ORS) was represented by Wendy B. Cartledge, Esquire.

Frank H. Wiles, Jr., founder of the Company, testified in favor of the Application. Wiles began Congaree Service & Trading Company to deliver new furniture for furniture stores. Mr. Wiles wishes to expand his business to do full household goods moving statewide under the Congaree Delivery Service name. The Company’s Application listed as moving equipment an Astro Van, an Expedition F250, two box trailers, and two box vans. A late-filed exhibit was filed showing insurance coverage on the vehicles. Mr.

Wiles also testified that his vehicles passed the safety inspection of the South Carolina Department of Public Safety. There are no judgments against the Company. Mr. Wiles testified as to the financial assets of the Company. Mr. Wiles also stated that he has an office in Columbia, but was also planning on having offices in the Greenville/Spartanburg area and one in the Charleston area.

With regard to shipper witnesses, Chris Pracht of Anderson, South Carolina, an auctioneer, testified as to the need for additional movers in the Upstate. Rodney Lee of Ridgeway, South Carolina testified as to the need for additional movers in the Midlands, the Upstate, and the Lowcountry. Jack Burg, of Charleston, testified as to the need for household goods movers in the Lowcountry.

George Parker, Manager of the Transportation Department of the Office of Regulatory Staff, also testified. Parker inspected Congaree's facilities and vehicles and noted that he did not find any deficiencies. While expressing concerns about the rates and charges exhibit related to a fuel surcharge, Parker stated that these concerns have been addressed by the Company. Parker testified that he had no concerns about the Company being fit, willing, and able to perform the services proposed.

#### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Congaree Delivery Service, a Division of Congaree Service & Trading Co., LLC desires to provide moving services of household goods between points and places in South Carolina.

2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated since the record contains (1) a certification that Mr. Wiles is familiar with the regulations and statutes governing for-hire motor carrier services and (2) evidence that there are no outstanding judgments pending against Mr. Wiles or his Company. "Able" was demonstrated by the evidence of record which reveals that the Company has the present ability to and has arranged for the necessary truck and equipment with which to perform moving services, and has similarly arranged for insurance which meets the minimum requirements set by this Commission. The evidence of record also indicates that Congaree possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. "Willingness" was demonstrated by the filing of the Application and the testimony of the witnesses indicating the Applicant's desire to undertake this business venture in South Carolina.

3. The services proposed by Congaree are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Company establish that the public convenience and necessity warrant the issuance of the permit requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Congaree Delivery Service, a Division of Congaree Service & Trading Co., LLC has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Ann. Regs. 103-133 (Supp.2005).

2. The Commission concludes that the Company has sufficiently demonstrated that the public convenience and necessity requires its proposed services as reflected in its Application.

3. Based on the conclusions above, that the Company has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Congaree Delivery Service, a Division of Congaree Service & Trading Co., LLC should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in S. C. Code Ann. Regs. 103-210(1):

Between points and places in South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Congaree Delivery Service, a Division of Congaree Service & Trading Co., LLC for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.



2. The Company shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (1976), as amended, a Certificate shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4 Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

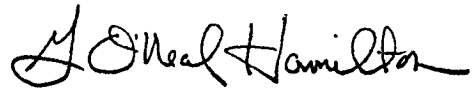
5. Failure of the Applicant either (1) to complete the certification process by complying with the Office of Regulatory Staff requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
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Randy Mitchell, Chairman

ATTEST:

  
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G. O'Neal Hamilton, Vice Chairman

(SEAL)